



On January 12, 2017, the City Council voted to instruct the City Attorney to file written charges of removal against the Mayor. Since that time, there has been a lot of information provided to the public and a significant amount of that has been incorrect. The purpose of this statement is to identify and correct this misinformation.

The Council has taken no action other than to instruct the City Attorney to file charges and, to be clear, the Council has not voted to remove the Mayor from office. The process the Council has started is set forth in Iowa Code Section 66.29 and City Code 1-7-6. The first step is for the City Council to authorize the City Attorney to prepare and file written charges of removal. The grounds for an elected official, such as the Mayor, to be removed are: willful or habitual neglect or refusal to perform the duties of his or her office; willful misconduct or maladministration in office; corruption; extortion; conviction of a felony; intoxication, or upon conviction of being intoxicated, or for possession of any illegal substances; and or conviction of violating election laws. There is no requirement that removal from office requires a criminal action or an action resulting in a state investigation.

The second step in the process is for the City Attorney to file the charges with the City, which are made available to the public upon filing. The charges have now been filed after the parties attempts to settle the matter were unsuccessful. After charges are filed, the Council decides whether it wants to move forward with the removal process. If the Council moves forward, a hearing will be set to allow the Mayor an opportunity to respond to the charges. After the hearing, the Council shall allow for written briefs and proposed decisions to be submitted. Finally, once the briefs and proposals have been reviewed, the Council shall issue its decision. The Iowa Code does not require written charges to be filed in district court and does not require the charges to be brought by the County Attorney. The City never provided a timetable for this process and never stated when the charges will be filed.

No Attorney General Opinion has been issued stating that the City of Muscatine has committed a criminal violation of Iowa Code Chapter 400. The County Attorney's Office and the Attorney General's Office are not investigating the City, and neither the County Attorney's Office nor the Attorney General's Office have recommended criminal charges against any City official or staff.

Since her election, the Mayor has been excluded from three closed sessions due to a conflict of interest. The Mayor filed a complaint with the Iowa Public Information Board (IPIB) regarding the Mayor's closed session exclusion and, on or about November 15, 2016, IPIB dismissed the Mayor's complaint.

BEFORE THE MUSCATINE, IOWA CITY COUNCIL



IN THE MATTER OF:

Diana L. Broderson

**CITY OF MUSCATINE'S
WRITTEN CHARGES
OF REMOVAL**

COMES NOW, the City of Muscatine, by and through the undersigned, pursuant to Iowa Code Section 66.29 and Muscatine City Code Section 1-7-6, and hereby makes the following written charges against the Mayor of the City of Muscatine:

I. INTRODUCTION

The Mayor of the City of Muscatine is a non-voting member of the City Council who presides over Council meetings and serves as the chief executive officer of the City. See Iowa Code Section 372.14, Muscatine City Code Section 1-7-2 and attached Addendum (which includes an explanation of the Mayor's limited powers in contrast to the Council's expansive powers and the City Administrator's broad responsibilities). The Mayor's powers, which are limited by State and City Code, include: presiding at council meetings; taking care that the laws of the State of Iowa and the provisions of the City Code are duly respected, observed, and enforced within the City; and making appointments, subject to the approval of the Council, to City boards and commissions. See *id.*

Diana L. Broderson is the Mayor of the City of Muscatine, Iowa. Her term of office commenced on January 1, 2016, and is scheduled to expire on December 31, 2017. While serving as Mayor, she has engaged in conduct that violates the City Code and the City Code of Ethics, has taken actions outside the limited scope of her powers, neglected

her duties, engaged in misconduct or maladministration of office, misused her power and abused her office sufficient to warrant her removal from the office of Mayor.

The City Council may remove the Mayor from office upon a two-thirds (2/3rd) vote of the City Council upon a finding of: willful or habitual neglect or refusal to perform the duties of her office; willful misconduct or maladministration in office; corruption; extortion; conviction of a felony; intoxication, or upon conviction of being intoxicated or for possession of any illegal substances; or conviction of violating campaign disclosure law. *See* Iowa Code section 66.29 and Muscatine City Code Section 1-7-6(b).

To determine if removal is appropriate, the first step is for the City Council to authorize the City Attorney to prepare and file written charges of removal. Subsequently, the City Attorney prepares and files the charges with the City, which are thereafter served upon the Mayor. The Council then determines whether to proceed with a removal hearing. If the Council decides to take no further action, the matter is concluded.

If the Council determines to hold a removal hearing, they shall provide notice to the Mayor and set a date at least ten (10) days from the date the notice of hearing is served. The Council conducts the hearing and selects a person to preside over the hearing. The City Attorney shall provide legal advice to the Council during the hearing and special counsel shall be engaged to present the charges at the hearing. During the hearing, both sides are afforded the opportunity to present arguments and introduce evidence at the hearing. After the hearing, the Council shall allow both sides to submit written briefs and proposed decisions. After receiving the post-hearing submissions from the parties, the Council shall issue its decision.

II. STATEMENT OF FACTS

1. January 21, 2016, the Mayor contacted the City Attorney to discuss allegations that City staff had violated the law by, among other things, hiring a retired employee as a consultant; accepting an offer from a contractor to fly City staff in a private plane in exchange for the contractor being awarded a City construction project; and that City staff had unlawfully signed a health inspection report causing the City to lose its ability to perform health inspections. (The City Attorney and other City staff serve under the direction of the City Administrator so, in accordance with City Code and procedures, the Mayor was required to get permission to contact the City Attorney.) The Mayor was advised she did not have any evidence to support her claims but the City Attorney agreed to investigate the limited information she did provide. The City Attorney investigated and was unable to find any evidence to support the claims. Making baseless complaints was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

2. On or about February 4, 2016, the Mayor requested that the appointment of three individuals to the Planning and Zoning Commission be placed on the agenda of the February 4, 2016, meeting. Under City Code in effect at the time, the Mayor had the power to appoint individuals to certain boards and commissions, subject to the approval of the Council. *See Addendum.* The Mayor, not the Council, pulled the appointments off the agenda and the Council took no action on the appointments.

3. On February 18, 2016, the Council requested the City Attorney explain the role of the elected officials—including the limited role of the Mayor—and discuss potential liability for the City and individual elected officials when elected officials

violate the City's Ethics Policy by making personal charges or verbal attacks upon the character or motives of other members of the Council, boards and commissions, the staff, city employees or the public. At the request of the Council, the meeting ended with the Mayor and City Administrator shaking hands and promising to work together.

4. The following morning, on February 19, 2016, the Mayor made a complaint against the City Council and City Administrator claiming that she had been discriminated against on the basis of her gender. An outside investigator was brought in to research the allegations. After a month-long investigation, no evidence was found to support the Mayor's allegations against the City Administrator or City Council. Making baseless complaints was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

5. February 26, 2016, the Mayor contacted City staff to request an investigation and action taken against some members of City staff based upon complaints made about the Mayor on social media. The Mayor alleged that the complaints were made by City staff and, because the comments complained about the Mayor and her job performance, they were in violation of the City's social media policy. The Mayor was advised that there was insufficient evidence to investigate who had made the anonymous comments and, with regard to comments made by employees, taking action against City staff who were posting comments about their job and/or elected officials may violate federal labor law.

6. February 29, 2016, the Mayor sent a list of appointments to the Council via email. Council members asked for additional information about the appointments and, in response, the Mayor alleged that the Council's actions were evidence she was being

discriminated against and bullied by the Council and the City Administrator. The City Attorney reviewed the Mayor's complaint and found no evidence to support any of her allegations. Making baseless complaints was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

7. February 29, 2016, the Mayor notified the City Attorney that, against his advice, she had met with the State Ombudsman to file a complaint alleging that the City and City Administrator had violated the law regarding the City's health inspection program. To date, no Ombudsman's complaint has been received by the City or City Staff and the City Attorney found no evidence to support her claims. Making a complaint without evidence was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

8. On or about March 3, 2016, the Mayor requested that the appointment of two of the three original individuals to the Planning and Zoning Commission be placed on the agenda of the March 3, 2016, meeting. The Council voted to approve both appointments. The Mayor also requested appointments to the Civil Service Commission and the Board of Water, Electric and Communications Trustees. The Mayor pulled the Civil Service appointment and the Council voted to table action on the utilities trustee. During the meeting, the Mayor made personal charges and verbal attacks upon the character or motives of other members of the Council because all of her board appointments were not approved. Making baseless claims was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

9. On or about March 10, 2016, the City Attorney was contacted by legal counsel of the Iowa League of Cities stating that the Mayor was working to change state

law to allow mayors to have direct contact with city attorneys. This change to the law would overrule Muscatine's City Code, which requires elected officials to work through the City Administrator to contact City staff. The Mayor never spoke with the Council about changing the existing City Code either before or after her attempt to change the Iowa Code and, ultimately, the Iowa Code was not changed. Attempting to change state law to override City Code was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

10. On or about March 18, 2016, the City was made aware that the Muscatine Journal had filed an informal complaint with the Iowa Public Information Board. The complaint was based upon emails voluntarily provided by the Mayor to the press, without consulting with the Council, City staff or the City Attorney. The Mayor's actions prevented the City from determining if any of the information she provided waived attorney/client privilege and/or was a confidential record exempt from disclosure under Iowa Code Section 22.7. The complaint was ultimately dismissed.

11. April 1, 2016, the Mayor contacted several members of City staff directly to make allegations against a contractor that had bid on a City construction project by stating that the contractor was not very big and likely lacked the skilled help or qualified staff to timely complete the job. The Mayor also claimed that the contractor was responsible for problems with a casino project in Davenport. These charges against the contractor were made to City staff in violation of the City Code requiring elected officials to deal with City staff solely through the City Administrator. In addition, making allegations against a member of the public without evidence was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

12. April 7, 2016, the City Attorney provided, for the second time, a legal opinion regarding the need for the Mayor to act within the scope of her authority. The Mayor was reminded that the City Code states that the City Administrator is in charge of City staff so the Mayor needed to work through him and not contact City staff directly. The Mayor was again cautioned that continuing to act outside the scope of her limited authority could expose both her and the City to liability and could result in the City and/or some elected officials losing insurance coverage in the event a lawsuit was filed.

13. April 14, 2016, during a City Council meeting, the Mayor announced she was creating a special taskforce to investigate the City's form of government, which is not within her powers as Mayor, and did so without authority or authorization from the Council. *See Addendum.*

14. On or about April 21, 2016, the Mayor requested her original appointment to the Civil Service Commission be placed on the April 21, 2016, meeting agenda. No Council member made a motion on the appointment and the person was not appointed to the Civil Service Commission.

15. April 22, 2016, the Mayor emailed the City Attorney alleging that the Mayor's Community Improvement Action Team committee and the City's China committee were not properly authorized by the Council under the City Code. The City Attorney found no evidence to support her claims. Making these allegations without evidence was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

16. April 28, 2016, the Mayor contacted the City Attorney to discuss potential criminal allegations against Councilmember Fitzgerald. The Mayor did not provide specific information about the charges; however, based on the general information

provided, the City Attorney found no evidence to support the claims. Making these baseless allegations was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

17. April 28, 2016, the City Attorney was notified by the Iowa Public Information Board that the Mayor had filed an open meetings complaint against the City Council, City Administrator and City Attorney. The complaint alleged that the minutes of the City's closed session meetings were not detailed enough and that said minutes were not formally approved by the Council. The complaint was dismissed. Making a complaint without evidence was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

18. April 30, 2016, the Mayor held the first "Coffee with the Mayor," a meeting with the public that was not authorized by the Council. Mayor discussed, among other things, her disagreements with the Council about board appointments and stated that she had tried many times to work with the Council without success. Making these allegations was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

19. May 6, 2016, the Mayor contacted City staff without authorization of the City Administrator. The Mayor stated it was part of a plan for her to begin having regular meetings with City staff. This was in violation of the City Code requiring elected officials to deal with City staff solely through the City Administrator. *See Addendum.*

20. May 11, 2016, the City received notice that the Auditor of Iowa had received an anonymous complaint to perform a review of the City's 2014/2015 audit. The City subsequently learned that the complaint had been filed by the Mayor and involved

the City's sister-city relationship with China. The Mayor did not discuss the allegations with City staff or the Council prior to filing her complaint. Filing a complaint without evidence was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

21. Also on May 11, 2016, City staff was notified that a complaint had been made to the Iowa Public Employees Retirement System that a retired City staff person had violated the terms of his retirement by contracting with the City to provide assistance until his replacement could be named. This complaint was raised by the Mayor in her January 21, 2016, discussion with the City Attorney. City staff responded to the complaint on May 20, 2016, providing evidence that the complaint was without merit and, to date, no further inquiry has been received. If the complaint was found to have merit, the City would not be penalized but the former City staff member could have their retirement benefits reduced. Making a baseless complaint was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

22. May 21, 2016, the Mayor held a second "Coffee with the Mayor" meeting with the public. During the meeting she stated, among other things, that: (a) her complaint about anonymous staff making social media posts was not investigated; (b) City employees were afraid for their jobs; (c) the Council had done nothing to support her since she was elected; (d) the City Administrator and Council were not following the current form of government and were preventing her from doing her job; (e) she was being treated poorly by the Council and the City Administrator because of her gender; (f) the City Administrator and City Attorney refused to answer her questions about her appointment powers; and (g) the City Administrator was the cause of her problems. The comments were personal charges and verbal attacks upon the character or motives of

other members of the Council and City staff. Making baseless allegations was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

23. On or about June 20, 2016, the Mayor spent approximately six hundred dollars (\$600) of her campaign funds to send a letter to citizens stating that the 'good old boys' on the City Council were attempting to destroy the office of Mayor and wanted to take away Mayor's power to give them to an 'unelected bureaucrat.' The Mayor compared the City Council to a closed-door, backroom government and requested help to stand up to 'bullies.' This letter consisted of personal charges and verbal attacks upon the character or motives of other members of the Council and City staff. Making these baseless allegations was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

24. June 23, 2016, the Mayor contacted the City Administrator alleging that she, again, had an issue with social media posts made by City staff. This time the Mayor identified specific City staff members and wanted to research options to take action against them. The Mayor was, again, counseled that disciplining City staff who post comments about their job and/or post about an elected official could violate federal labor law.

25. June 23, 2016, the Mayor was again counseled to act within the scope of her authority, to stop contacting City staff directly and to stop making personal attacks to the public about the City, elected officials and City staff. The Mayor was again cautioned that her actions could expose the City and the Mayor to potential liability and could result in the City and/or the elected officials losing insurance coverage. The Council was advised that, if the Mayor continued to act in violation of the City's rules and/or outside

the scope of her authority, at some point the Council may need to research the options available to protect the City, the employees and the other elected officials.

26. On or about July 21, 2016, the Mayor requested seventeen (17) appointments be placed on the agenda of the July 21, 2016, Council meeting. These appointments were made three months after her last appointments and six months after the positions became vacant. Under City Code in effect at the time, the Mayor had the power to appoint individuals to certain boards and commissions, subject to the approval of the Council. *See Addendum.* The Council did in fact approve fourteen (14) of Mayor's seventeen (17) appointments—including appointments to the Airport Advisory Commission, the Art Center Board of Trustees, the Board of Water, Electric, and Communications Trustees, the Convention and Visitors Board, the Library Board of Trustees, the Planning and Zoning Commission, the Recreation Advisory Commission and the Transportation Advisory Commission. The Council tabled consideration of three (3) appointments—two to the Zoning Board of Adjustment and one to the Civil Service Commission.

27. On or about August 1, 2016, the Mayor spent approximately seven hundred fifty dollars (\$750) sending a second letter to citizens alleging that the Council was not democratic because they were blocking her appointments to boards and commissions. She provided personal telephone numbers and email addresses of the Councilmembers and encouraged people to contact them directly. This letter consisted of personal charges and verbal attacks upon the character or motives of other members of the Council. Making these allegations was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

28. August 18, 2016, during an interview with the press, the Mayor told a reporter that the City Administrator was the cause of her problems and that he came into her office on her first day and told her that he runs the City. Making these allegations was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

29. August 22, 2016, the Mayor again contacted City staff directly to, among other things, inform the City staff member that she planned to be involved in his discussions and meetings regarding a proposed river port. This was, among other things, a violation of the City Code requiring elected officials to deal with City staff solely through the City Administrator. *See Addendum.*

30. August 26, 2016, Jeff Sorenson, a Muscatine County Supervisor, contacted the City regarding the actions of the Mayor and another Muscatine County Supervisor at an apartment facility where they demanded in their official capacity, that: (a) the facility needed to remodel and rearrange seating, bathrooms and parking; and (b) the facility should sponsor a spaghetti supper for the City's Police and/or Fire Department. Based on a complaint filed by the apartment manager, the City Police Department notified the County Supervisor that a trespass order had been issued so the Supervisor would be arrested if the Supervisor attempted to return to the apartment facility. Subsequently, the Mayor contacted the Police Chief to question the Police Department's decision to issue the trespass order.

31. On or about October 17, 2016, the Mayor contacted the Muscatine County Attorney to discuss potential criminal charges against two journalists—Emily Wegner of the Muscatine Journal and Mary Mason of the Voice of Muscatine. The Mayor's actions were, among other things, a violation of the City's Ethics Policy. *See Addendum.* The

response of the County Attorney was that there would be no charges filed against the journalists.

32. October 31, 2016, the Mayor filed another Iowa Public Information Board complaint against the City alleging, among other things, that she was inappropriately excluded from a closed session meeting. That complaint was dismissed. Filing this complaint without evidence was, among other things, a violation of the City's Ethics Policy. *See Addendum.*

33. On November 16, 2016, the Mayor's personal attorney, Bill M. Sueppel, contacted the Muscatine County Attorney claiming that the change to the Mayor's Civil Service appointment power was a criminal violation.

34. On or about December 13, 2016, the Mayor contacted the Muscatine County Attorney to discuss criminal charges being filed against the City Council, the City Administrator and the City Attorney. The response of the County Attorney was that there was no basis to file criminal charges against any of those individuals. The Mayor subsequently claimed that the County Attorney had been ordered to file criminal charges by the Attorney General. In response, the County Attorney released correspondence from the Iowa Attorney General's Office agreeing with the County Attorney that no criminal charges should be filed. The Mayor's actions were, among other things, a violation of the City's Ethics Policy. *See Addendum.*

35. On December 15, 2016, the Mayor used five hundred dollars (\$500) of campaign funds to pay for her personal attorney, Bill M. Sueppel.

36. In 2016, the City incurred sixty-three thousand nine hundred fifty-five dollars (\$63,955.00) in unbudgeted attorney's fees and costs, along with a conservative

estimate of an additional forty-three thousand, six-hundred nineteen dollars and eight cents (\$43,619.08) of staff time responding to the Mayor's claims and allegations against the City, its elected officials, employees and contractors. The Mayor's actions in repeatedly making accusations without evidence were, among other things, in violation of the City's Ethics Policy. *See Addendum.*

III. LEGAL ARGUMENTS

A. Willful Misconduct and/or Maladministration

The Mayor may be removed from office for willful misconduct or maladministration in office. *See City Code 1-7-6.* Misconduct includes any unlawful behavior by a public officer in relation to the duties of this office, willful in character, and embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.

The specific incidents of misconduct or maladministration in this case fall into five general categories: 1) defamation and/or false allegations, 2) failure to comply with the City Code of Ethics, 3) failure to comply with the City Code, 4) breach of fiduciary duties; and 5) misuse of power and/or abuse of office.

1. Defamation/False Allegations

As set forth above, the Mayor has made false, defamatory, and/or unfounded allegations against various individuals and the City outside the scope of her authority and/or without the authority to do so. The Mayor was not acting within the scope of her authority when making the above-mentioned unfounded, defamatory, and/or false allegations or claims, and the Mayor engaged in willful misconduct and maladministration in office by doing so.

2. Failure to Comply with the City Code of Ethics

In pertinent part, Section 1.003 of the Muscatine Code of Ethics provides that elected officials shall comply with all city and state laws and refrain from making personal charges upon the character or motives of the council, members of the public, or City employees. *See* Muscatine Code of Ethics, Section 1.003. During the course of her tenure, the Mayor has violated the City's Code of Ethics on a number occasions, including as set forth above. In the foregoing instances, the Mayor made personal charges upon the character or motives of the Council, members of the public, or City staff and her actions constituted willful misconduct and maladministration of office.

3. Failure to Comply with the City Code

City Code Section 1-10-2(E)(1)(B) states that "Any elected official shall deal with City Department Heads and employees, who are subject to the direction and supervision of the City Administrator *solely*, through the City Administrator, and Council Members shall not give orders to any such Department Heads or employees either publicly or privately. All departmental activity requiring the attention of the Council shall be brought before that body by the City Administrator." *See* City Code Section 1-10-2(E)(1)(B). Furthermore, pursuant to City Code Title 2, Chapter 10, City Council has the *sole* authority to create task forces and ad-hoc committees as needed. *See* City Code Section 2-10, *et. seq.*

As set forth above, during the course of her tenure, the Mayor violated the aforementioned provisions of the Muscatine City Code as set forth above. In each of the foregoing instances, the Mayor either contacted City staff concerning personnel matters, pursued personnel matters after having been instructed not to, or formed ad-hoc

committees or task forces in direct contravention of the City Code. Mayor's actions constituted willful misconduct and maladministration of office.

4. Breach of Fiduciary Duties

As an elected official for the City of Muscatine, the Mayor has various fiduciary obligations imposed by law. These fiduciary obligations require that elected officials such as the Mayor act in good faith, exercise reasonable care, and maintain loyalty to the City. During the course of her tenure, the Mayor has violated her fiduciary obligations to the City by failing to act in good faith, exercise reasonable care, and maintain loyalty to the City.

As set forth above, the Mayor has breached her fiduciary obligations to the City, which require that she act in good faith, exercise reasonable care, and maintain loyalty to the City. Her breaches of these fiduciary obligations caused substantial harm to the City and exposed the City to unnecessary costs and litigation. Her actions not only exposed the City to direct costs, but also potentially exposed the City to legal action and liability. The Mayor's actions are a breach of her fiduciary obligations to the City and constitute willful misconduct and maladministration of office.

5. Misuse of Power and/or Abuse of Discretion

A misuse of power is the improper use of authority by someone who has that authority because he or she holds a public office. Abuse of discretion occurs whenever, in its exercise, a person uses an office, the color of title and/or a legal process to fulfill a purpose for which it was not meant. As set forth above, the Mayor misused her power and/or abused her discretion which caused substantial harm to the City and citizens, as well as potentially exposed the City to legal action and liability.

6. Respondent's Actions Were Willful.

The Mayor has been provided legal counsel on several occasions regarding the importance of acting within the scope of her authority. The Mayor engaged in the conduct set forth above despite being counseled multiple times regarding the scope of her authority under the City Code and State law and of the importance of acting within the scope of her authority to protect the City from unnecessary costs and liability. The Mayor was or should have been aware of the wrongfulness of her conduct and yet refused to refrain from engaging in such conduct. The Mayor's conduct occurred so frequently as to be the rule rather than the exception and indicates that she engaged in such misconduct and maladministration willfully.

B. Willful or Habitual Neglect or Refusal To Perform The Duties Of Her Office

Pursuant to City Ordinance 1-7-6(a), the Mayor may be removed from office for willful or habitual neglect or refusal to perform the duties of her office. Since taking office, the Mayor has willfully and habitually neglected to perform within the scope of the duties of her office. The Mayor was repeatedly educated on the scope of her authority, of the need to act within the scope of that authority for liability and cost reasons, and of the need to refrain from making damaging comments to the public about the City, elected officials and City staff.

Despite being made aware of her lawful authority and the limitations to that authority, the Mayor—as set forth above—has continued to exceed the scope of her authority, to make damaging comments to the public about the City, elected officials, and City staff, to violate the City Code of Ethics, to violate City Code, and to breach her fiduciary obligations to the City. By engaging in such conduct, the Mayor has failed to

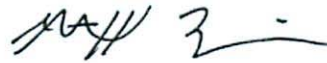
properly perform her duties as established by City Code, which require that she abide by the laws of the State of Iowa and of the City. In addition, the Mayor exposed the City to unnecessary costs and potential liability. As evidenced by the constant and knowing nature of Respondent's actions, the Mayor willfully neglected her duties and engaged in conscientious wrong. Moreover, giving the frequency of her conduct, she habitually neglected the duties of her office.

IV. PRAYER FOR RELIEF

WHEREFORE, the undersigned requests that the City Council find that the Mayor of Muscatine, Iowa engaged in willful misconduct and maladministration of office as well as willful and habitual neglect of office and that the City Council enter an order removing her from Office of the Mayor pursuant to City Code section 1-7-6.

Respectfully Submitted by,

BRICK GENTRY P.C.



Matthew S. Brick
6701 Westown Parkway, Suite 100
West Des Moines, Iowa 50266
Telephone: (515) 274-1450
Facsimile: (515) 274-1488
Email: matt.brick@brickgentrylaw.com
MUSCATINE CITY ATTORNEY

ADDENDUM OF RELEVANT CITY CODE CITATIONS

1. **Powers of the Mayor:** Section 1-7-2 of the City Code identifies the following powers of the Mayor of Muscatine:
 - a. The Mayor shall be the chief executive officer of the City;
 - b. The Mayor shall take care that the laws of the State of Iowa and the provisions of this City Code are duly respected, observed, and enforced within the City;
 - c. The Mayor shall preside at all council meetings, preserve order and decorum and shall decide all questions of order, subject to an appeal from the Council;
 - d. The Mayor shall from time to time give the Council information for its consideration on such measures as may be in the interest of the City;
 - e. The Mayor shall be the conservator of the peace and may call for the assistance of the police and, if necessary, any citizen of the City to aid in quelling or preventing any riot or unlawful assembly, or in preventing or restraining any breach of the peace and any such police officer or citizen, when so called upon, who shall refuse to obey the orders of the Mayor shall be deemed guilty of a misdemeanor;
 - f. The Mayor shall sign on behalf of the City all contracts between the City and any other party; and
 - g. The Mayor shall perform all duties required by the Charter, the provisions of this Code, resolutions of the City Council and all other acts which the good of the City may require.

2. Powers of the City Council: Section 1-9-2 of the City Code lists states that the powers of the Council include, but are not limited to, the following:

- a. General. All powers of the City are vested in the Council except as otherwise provided by law or ordinance.
- b. Wards. By ordinance, the Council shall divide the City into wards based upon population, change the boundaries of wards, eliminate wards or create new wards.
- c. Fiscal Authority. The Council shall apportion and appropriate all funds, and audit and allow all bills, accounts, payrolls and claims, and order payment thereof. It shall make all assessments for the cost of street improvements, sidewalks, sewers and other work, improvement or repairs which may be specially assessed.
- d. Public Improvements. The Council shall make all orders for the construction of any improvements, bridges or buildings.
- e. Contracts. The Council shall make or authorize the making of all contracts. No contract shall bind or be obligatory upon the City unless adopted by resolution of the Council.
- f. Employees. The Council shall authorize the number, duties, term of office and compensation of employees or officers not otherwise provided for by State law or the Code of Ordinances.
- g. Setting Compensation for Elected Officers. By ordinance, the Council shall prescribe the compensation of the Mayor, Council members, and other elected City officers, but a change in the compensation of the Mayor

does not become effective during the term in which the change is adopted, and the Council shall not adopt such an ordinance changing the compensation of any elected officer during the months of November and December in the year of a regular City election. A change in the compensation of Council members becomes effective for all Council members at the beginning of the term of the Council members elected at the election next following the change in compensation.

3. Duties of the City Administrator: Section 1-10-2 of the City Code sets forth the duties of the City Administrator as follows:

- a. Enforcement of all City laws and regulations as directed by the Council.
- b. Administration of Council policies and directives.
- c. Continuous study of the City government's operating procedures, organization, and facilities and to recommend fiscal and other policies to the Council whenever necessary.
- d. Preparation and administration of the City's annual operating budget.
- e. Supervision of the City's administrative policies and procedures, including personnel.
- f. Keeping the Council informed on the progress of its programs and the status of its policies.
- g. Coordinating and directing all City services provided through the various departments.
- h. Appointment and removal of City employees in accordance with City policies regarding this activity.

- i. Study possible joint arrangements with City boards such as, but not limited to, the Board of Water, Electric, and Communications Trustees or any other independent board and make recommendations for such arrangements as are mutually acceptable.
 - j. Assist the Mayor in any of his or her duties, as requested by him or her and approved by the Council.
 - k. Review and revise imposition of penalties, costs, fees, bond, and insurance requirements as set out in the Appendices to this Code of Ordinances.
 - l. Oversee daily operations of City and staff
4. Elected Official Contact with Employees: Section 1-10-2 of the City Code requires that elected officials shall deal with City department heads and employees solely through the City Administrator and Council Members shall not give orders to any such department heads or employees either publicly or privately.
5. Board Member Appointments and Approval: When the Mayor took office in January 2016, the City Code stated that the members of City boards and commissions shall be appointed by the Mayor subject to the approval of the Council.
- a. This included members of the Airport Advisory Commission, Civil Service Commission, Parks and Recreation Advisory Commission, Historic Preservation Commission, Library Board of Trustees, Art Center Board of Trustees, Planning and Zoning Commission, Board of Water,

Electric, and Communications Trustees and Zoning Board of Adjustment.

See Sections 2-1-3, 2-2-5, 2-3-3, 2-4-4, 2-5-2, 2-6-3, 2-7-4, 2-8-4 & 2-9-4.

- b. In January 2016, the City Code stated that the appointment of members to the City's *ad hoc* committees and tasks forces shall be appointed and approved by the Council. *See* Section 2-10-2.
- c. On September 1, 2016, Title 2 of the City Code was revised to state that for all boards and commissions, except for the Library Board, the members shall be by appointed and approved by the Council.
- d. Also in September 2016, the Council created a Nominating Committee consisting of the Mayor, two Council members and a City staff member to make the appointments.

6. Ethics Policy: Section 1.003 of the Standards of Conduct Section of the Muscatine City Council Ethics Policy states:

- a. General Principles. Members shall comply with the laws of the United States, the State of Iowa and the City of Muscatine, Iowa's ordinances and policies in performance of their public duties. Members shall work for the common good of the people of Muscatine, Iowa and not for the private person or personal interest.
- b. A member's professional and personal conduct must be above reproach and must avoid even the appearance of impropriety. Members shall refrain from abusive conduct and should also refrain from making personal charges or verbal attacks upon the character or motives of other members of the council, boards and commissions, the staff, city employees or the

public. Council members should treat all city employees, fellow council members and the public in a respectful manner and shall not speak ill of the City of Muscatine, Iowa, any city employee, fellow council members or the public at a public meeting. All complaints or concerns about city employees shall be transmitted through the City Administrator who shall be charged with investigating those complaints. Any complaints about city employees should be made in writing, signed and dated.

7. Removal of the Mayor: Section 1-7-6 of the City Code states that the Mayor may be removed from office by action of the City Council for any of the following reasons:

- a. For willful or habitual neglect or refusal to perform the duties of his or her office.
- b. For willful misconduct or maladministration in office.
- c. For corruption.
- d. For extortion.
- e. Upon conviction of a felony.
- f. For intoxication, or upon conviction of being intoxicated, or for possession of any illegal substances.
- g. Upon conviction of violating the provisions of Chapter 68A, Code of Iowa.